

# EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

TYRONE KEYS	:	
Plaintiff,	:	
v.	:	Case No. 8:18-cv-02098-CEH-JSS
BERT BELL/PETE ROZELLE	:	
NFL PLAYER RETIREMENT PLAN	:	
and the NFL PLAYER DISABILITY	:	
& NEUROCOGNITIVE BENEFIT	:	
PLAN	:	
Defendants.	:	
	:	

**PLAINTIFF'S FIRST AMENDED ANSWER TO DEFENDANTS' COUNTERCLAIMS  
SEEKING RECOVERY OF DISABILITY BENEFIT OVERPAYMENTS  
OR THE FULL VALUE THEREOF**

Plaintiff, Tyrone Keys, by and through his undersigned counsel, hereby answers Defendants' Counterclaims Seeking Recovery of Disability Benefit Overpayments or the Full Value Thereof as follows:

**PARTIES**

1. Plaintiff admits that the Retirement Board has six voting members, three appointed by the NFL Players Association and three members appointed by the NFL Management Council. Plaintiff admits that the Retirement Board is the named fiduciary and administrator of the Retirement Plan. Plaintiff denies the remainder of paragraph 1.
2. Plaintiff admits that the Disability Board has six voting members, three appointed by the NFL Players Association and three appointed by the NFL Management Council. Plaintiff admits that the Disability Board is the named fiduciary and administrator of the Disability Plan.

Plaintiff denies the remainder of paragraph 2.

3. Plaintiff admits paragraph 3.
4. Plaintiff admits paragraph 4.

#### **JURISDICTION AND VENUE**

5. Plaintiff admits paragraph 5.
6. Plaintiff admits that this court has jurisdiction. Plaintiff denies the remainder of paragraph 6.
7. Plaintiff admits paragraph 7.

#### **BACKGROUND FACTS**

8. Plaintiff admits that the Plans are Taft-Hartley Plans. Plaintiff denies the remainder of paragraph 8.
9. Plaintiff admits that Line of Duty (LOD) benefits and total and permanent disability (T&P) benefits are available under the Plans. Plaintiff admits that this case involves T&P benefits. Plaintiff denies that this case involves LOD benefits.
10. Plaintiff admits paragraph 10.
11. Plaintiff admits paragraph 11.

#### **COUNT I**

##### **Defendants' Claim for Equitable and Declaratory Relief Seeking the Recovery of LOD Overpayments Under Section 502(a)(3) of ERISA**

12. Plaintiff admits paragraph 12.
13. Plaintiff admits paragraph 13.
14. Plaintiff admits that he was asked in the LOD application whether he had applied for workers compensation benefits. Plaintiff denies the remainder of paragraph 14.

15. Plaintiff admits paragraph 15.
16. Plaintiff has insufficient knowledge to admit or deny when the Plan office received his application, and therefore denies such allegation.
17. Plaintiff denies paragraph 17.
18. Plaintiff admits paragraph 18.
19. Plaintiff admits that he continued to receive benefits until December 1996. Plaintiff denies the remainder of paragraph 19.
20. Plaintiff denies paragraph 20.
21. Plaintiff denies paragraph 21.
22. Plaintiff denies paragraph 22.
23. Plaintiff denies paragraph 23.
24. Plaintiff denies paragraph 24.
25. Plaintiff denies paragraph 25.
26. Plaintiff denies paragraph 26.
27. Paragraph 27 describes the relief that the Defendants are requesting, and no response is required. Plaintiff denies that Defendants are entitled to any relief.

**COUNT II**

**Defendants' Claim for Equitable and Declaratory Relief Seeking the Recovery of LOD Overpayments Under Section 502(a)(3) of ERISA**

28. Plaintiff admits that he was frequently examined by a neutral physician selected by the Retirement Board in order for the Board to assess his continued eligibility for LOD benefits. Plaintiff denies the remainder of paragraph 28.

29. Plaintiff admits paragraph 29.

30. Plaintiff admits that in 1996 he asked the plan administrators to reclassify his benefits to T&P benefits. Plaintiff admits that the Board denied his request. Plaintiff denies the remainder of paragraph 30.

31. Plaintiff admits paragraph 31.

32. Plaintiff denies paragraph 32.

33. Plaintiff denies Defendants' characterization of Dr. Janecki's report and instead relies upon the document to speak for itself.

34. Plaintiff admits paragraph 34.

35. Plaintiff denies paragraph 35.

36. Plaintiff admits paragraph 36.

37. Plaintiff admits paragraph 37.

38. Plaintiff denies paragraph 38.

39. Plaintiff admits that he was approved for T&P benefits. The remainder of paragraph 39 is denied.

40. Plaintiff admits paragraph 40.

41. Plaintiff admits that he had to reapply for benefits in 2012. The remainder of paragraph 41 is denied.

42. Plaintiff admits that the Retirement Board reviewed his file and the information submitted to the Social Security Administration and the Internal Revenue Service. The Plaintiff denies the remainder of paragraph 42.

43. Plaintiff denies paragraph 43.

44. Plaintiff admits that the Retirement Board issued an initial decision regarding his claim for continued T&P benefits in August 2017. Plaintiff denies the conclusions reached by the

Retirement Board that are recounted in paragraph 44.

45. Plaintiff admits that Exhibit 1 is a true and correct copy of the initial adverse benefit determination made by the Board. The remainder of paragraph 45 requires no response.

46. Plaintiff admits paragraph 46.

47. Plaintiff admits that Exhibit 2 is a true and correct copy of the decision by the Retirement Board with respect to Plaintiff's appeal. The remainder of paragraph 47 requires no response.

48. Plaintiff denies paragraph 48.

49. Plaintiff denies paragraph 49.

50. Plaintiff admits that as of March 1, 2017 he is no longer receiving any benefits from the Plans. He denies the remainder of paragraph 50.

51. Plaintiff denies paragraph 51.

52. Plaintiff denies paragraph 52.

53. Plaintiff denies paragraph 53.

54. Plaintiff denies paragraph 54.

55. Paragraph 55 describes the relief that the Defendants are requesting, and no response is required. Plaintiff denies that Defendants are entitled to any relief.

56. Paragraph 56 describes the relief that the Defendants are requesting and no response is required. Plaintiff denies that the Defendants are entitled to any relief.

### **COUNT III**

#### **Defendants' Claim for Unjust Enrichment Under ERISA and/or Federal Common Law**

57. Plaintiff realleges and incorporates by references his answers to paragraphs 1 through

56 of Defendants' Counterclaims as though fully set forth herein.

58. Plaintiff denies paragraph 58.

59. Plaintiff denies paragraph 59.

60. Paragraph 60 describes the relief that the Defendants are requesting and no response is required. Plaintiff denies that the Defendants are entitled to any relief.

61. Paragraph 61 describes the relief that the Defendants are requesting and no response is required. Plaintiff denies that the Defendants are entitled to any relief.

In addition to the responses in paragraphs 1 through 61, Plaintiff denies every allegation of fact and conclusion of law in the Counterclaim not otherwise specifically admitted in this answer, and Plaintiff denies that the Defendant is entitled to the relief requested in the Counterclaims.

#### **AFFIRMATIVE DEFENSES TO COUNT I**

1. Defendants' claim for alleged LOD overpayments is barred due to the Defendants' failure to exhaust administrative remedies required by the Plans and ERISA claims procedures for the claim.

2. Defendants' claim for alleged LOD overpayments due to receipt of workers' compensation benefits is barred by the Plans' time limitations for filing suit for the claim, since the Plan Administrators had notice in September 2003 that Keys had received workers' compensation benefits in the amount of \$39,000, the amount of the alleged overpayment.

3. Defendants' claim for alleged LOD overpayments due to receipt of workers' compensation benefits is barred by the statutory or common law limitations period for filing suit for the claim, since the Plan Administrators had notice in September 2003 that Keys had received workers' compensation benefits in the amount of \$39,000, the amount of the alleged overpayment.

4. Defendants waived the right to pursue an LOD overpayment claim based upon Keys'

receipt of workers compensation benefits, since the Plan Administrators had notice in September 2003 that Keys had received workers' compensation benefits in the amount of \$39,000, the amount of the alleged overpayment.

5. Defendants are barred from bringing an equitable claim for recovery of LOD overpayments under 29 U.S.C. §1132(a)(3) because they seek recovery from the Plaintiff's general assets and have not identified any fund that is traceable to the alleged overpayment of LOD benefits.

#### **AFFIRMATIVE DEFENSES TO COUNT II**

1. Defendants' claim for T&P overpayments due to the alleged non-disclosure of the 2002 car accident is barred by the Plans' time limitations for filing suit for any such overpayment, since the Plan Administrators had notice of the car accident in 2004.

2. Defendants' claim for T&P overpayments due to the alleged non-disclosure of the 2002 car accident is barred by the statutory or common law limitations period for bringing such claims, since the Plan Administrators had notice of the car accident in 2004.

3. Defendants waived the right to pursue a T&P overpayment claim based upon the alleged non-disclosure of the 2002 car accident, since the Plan Administrators had notice of the car accident in 2004.

4. Defendants are barred from bringing such an equitable claim for recovery of alleged T&P overpayments under 29 U.S.C. §1132(a)(3) because they seek recovery from the Plaintiff's general assets and have not identified any fund that is traceable to the alleged overpayment of T&P benefits.

5. Defendants' claim is barred because as a condition to recover any alleged T&P overpayment under the Plans, Defendants must prove that the Plaintiff submitted false information

that led to a benefit award to which Plaintiff was not entitled. Plaintiff did not submit false information that led to a benefit award to which he was not entitled; therefore, Defendants' claims for overpayment of T&P benefits cannot be sustained.

6. Defendants claims under Count II are barred because the Plans provide no authority to seek such relief. Since the Plans' administrators have been collecting the alleged overpayment of T&P benefits by offsetting the Plaintiff's T&P Inactive B benefit payments since 2017 the Plans are limited to that relief to collect the alleged overpayment. The Plans do not authorize their administrators to pursue equitable relief under 29 U.S.C. §1132(a)(3) in addition to offsetting T&P benefit payments that are due the Plaintiff.

### **AFFIRMATIVE DEFENSES TO COUNT III**

1. Defendants' claim of unjust enrichment for alleged LOD payments based upon fraud, more specifically the non-disclosure of receipt of workers' compensation benefits, is barred by the Plans' time limitations for making such a claim, since the Plan Administrators had notice in September 2003 that Keys received \$39,000 in workers' compensation benefits, the amount of the alleged overpayment.

2. Defendants' claim of unjust enrichment for alleged T&P payments based upon fraud, more specifically the non-disclosure of an auto accident occurring in 2002, is barred by the Plans' time limitations for making such a claim, since the Plan Administrators had notice of the accident in 2004.

3. Defendants' claim of unjust enrichment for alleged LOD payments based upon fraud, more specifically the non-disclosure of receipt of workers' compensation benefits, is barred by the statutory or common law limitations period for bringing such a claim, since the Plan Administrators

had notice in September 2003 that Keys received \$39,000 in workers' compensation benefits, the amount of the alleged overpayment.

4. Defendants' claim of unjust enrichment for alleged T&P payments based upon fraud, more specifically the non-disclosure of an auto accident occurring in 2002, is barred by the statutory or common law limitations period for bringing such a claim, since the Plan Administrators had notice of the accident in 2004.

5. Defendants waived the right to make any unjust enrichment claim for alleged LOD and T&P payments based upon fraud, since the Plan Administrators learned about the workers' compensation benefits, the basis of the Defendants' LOD overpayment claim, in September 2003, and learned about the 2002 car accident, the basis of the Defendants' T&P overpayment claim, in 2004.

6. Defendants are barred from bringing such a claim for recovery based upon fraud under 29 U.S.C. §1132(a)(3) because they seek recovery from the Plaintiff's general assets and have not identified any fund that is traceable to the alleged overpayment of LOD or T&P benefits.

7. Defendants' claims are barred because Plaintiff did not commit fraud in relation to either the payment of LOD benefits or T&P benefits.

8. Defendants' claims of unjust enrichment under the federal law are preempted by ERISA.

9. Defendants claims for recoupment of alleged overpaid T&P benefits brought under Count III are barred because the Plans provide no authority to seek such relief. Since the Plans' administrators have been collecting the alleged overpayment of T&P benefits by offsetting the Plaintiff's T&P Inactive B benefit payments since 2017 the Plans are limited to that relief to collect the alleged overpayment. The Plans do not authorize their administrators to pursue equitable relief under 29 U.S.C. §1132(a)(3) in addition to offsetting T&P benefit payments that are due the

Plaintiff.

/s/ Lansing C. Scriven

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing **PLAINTIFF'S FIRST AMENDED ANSWER TO DEFENDANTS' COUNTERCLAIMS SEEKING RECOVERY OF DISABILITY BENEFIT OVERPAYMENTS OR THE FULL VALUE THEREOF** has been electronically filed with the Clerk of the Court using the CM/ECF system. I further certify that a true and correct copy of the foregoing will be furnished through the CM/ECF system to counsel of record on this \_\_\_\_\_ day of August, 2019.

/s/ Lansing C. Scriven